

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

(*Name*), Local Assistance Engineer
State of California
Department of Transportation, District
Office of Local Assistance
(*Address*)
(*City*, CA *Zip*)

(Space above for Recorder's use.)

Applicant must **record ADRC, including Attachments A and B**, within 10 days of closing escrow and send original to Caltrans or repay funds.

Environmental Enhancement and Mitigation Program (EEMP) Agreement Declaring Restrictive Covenants

EEMP Project Number: EEM-2008()
Applicant-State Agreement Number: _____

This Agreement Declaring Restrictive Covenants, hereinafter referred to as "ADRC", is entered into effective this _____ day of _____, 2_____, by and between the _____, including their assigns and successors in interest with respect to all duties and obligations assumed herein, hereinafter referred to collectively as "APPLICANT," and the State of California, acting by and through the Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WHEREAS, APPLICANT will become the owner of certain real property, hereinafter referred to as "REAL PROPERTY", described in Attachment ADRC-A, attached hereto and incorporated herein by this reference; and

WHEREAS, APPLICANT will acquire this REAL PROPERTY described in Attachment ADRC-A for the purpose of preserving, improving and enhancing the REAL PROPERTY for public use as described in the Environmental Enhancement and Mitigation (EEMP) Application Form, hereinafter referred to as "APPLICATION", attached hereto as Attachment ADRC-B and incorporated herein by reference; and

WHEREAS, STATE has allocated federal funds to APPLICANT for REAL PROPERTY and improvements thereto as provided in section 164.56 of Streets and Highways Code, (Statutes of 1999, Chapter 739); and

WHEREAS, both APPLICANT and STATE desire and intend to permanently restrict the REAL PROPERTY uses now and in perpetuity to the transportation enhancement purposes, as set forth in the APPLICATION, specifically for scenic value and scenic enhancement purposes through landscaping and maintenance, so that both the State of California and each successive owner of all or part of said REAL PROPERTY shall be benefited by the preservation of REAL PROPERTY for that purpose, herein after referred to as "ENHANCEMENT AND MITIGATION PURPOSES".

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived therefrom, and to bind, their successors in interest, the said parties agree as follows:

Management and Maintenance of Property

1. Although not an exhaustive list, none of the prohibited uses described in Attachment ADRC – C, attached hereto and incorporated herein by this reference, shall be made of the REAL PROPERTY.

2. APPLICANT will use, manage and maintain, now and in the future, the REAL PROPERTY acquired, preserved, landscaped, rehabilitated, or restored with state EEMP funds allocated to APPLICANT, pursuant to terms and conditions of the Applicant-State Agreement, attached hereto as Attachment ADRC – D and incorporated herein by this reference, the approved APPLICATION, and this ADRC. If there is any conflict between the documents, this ADRC shall control first, the Applicant-State Agreement second and the approved APPLICATION last. If APPLICANT fails to use, manage and maintain the REAL PROPERTY pursuant to the terms of this ADRC, APPLICANT will be required to cure said noticed violation within thirty (30) calendar days of awareness of that violation. If APPLICANT fails to cure the violation within thirty (30) calendar days of awareness, or where the violation cannot reasonably be cured within thirty (30) calendar days, fails to begin curing such violation within that thirty (30) calendar day period, or fails to continue diligently to cure such violation until finally cured, such failure will be deemed as a default of this ADRC. If a default occurs, the ENHANCEMENT AND MITIGATION PURPOSES will have been deemed violated and APPLICANT must comply with the requirements set forth in section 4 below.

3. All of the REAL PROPERTY, including all of the improvements made thereto, shall be subject to this ADRC. APPLICANT shall notify STATE of any proposed sale, transfer, trade or taking by an exercise of the power of eminent domain of REAL PROPERTY by sending written notice to: State of California, Department of Transportation, Legal Division, 1120 N Street, (MS57) Sacramento, CA 95814.

4. A. In the event of a default or a non-approved sale, transfer, or trade, APPLICANT shall reimburse STATE an amount either equal to (i) STATE'S total funding participation for the REAL PROPERTY including improvements made thereto, specifically up to \$_____ or (ii) STATE'S pro rata participation (determined to be ____%) in the acquisition of said REAL PROPERTY, including the improvements made thereto, measured by the subsequent fair market value at the time of default or non-approved sale, trade, or transfer, whichever is higher; or

B. If REAL PROPERTY is sold pursuant to a threat of or taken by an exercise of the power of eminent domain, in whole or in part, APPLICANT shall then reimburse STATE for REAL PROPERTY that is taken or sold, based upon STATE's pro rata participation (determined to be ____%) in the acquisition of said REAL PROPERTY, including the improvements made thereto, measured by the subsequent fair market value at the time of that sale or taking. Said sum shall be paid from the net property acquisition proceeds received by APPLICANT from any sale or taking of REAL PROPERTY.

Transportation Facilities

5. It is agreed between the parties that there may be a STATE transportation facility located near the REAL PROPERTY. As such, it is foreseeable that the STATE transportation facility may be expanded in the future into the REAL PROPERTY. Therefore, both parties agree that this ADRC as it is applied to the REAL PROPERTY needed for STATE transportation purposes, will be extinguished and that section of REAL PROPERTY will be sold to the Department or other responsible transportation authority. Said monies shall be distributed as set forth in Paragraph 4 B above.

Term

6. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until amended pursuant to the Amendment provision of this ADRC.

Amendment

7. With STATE's prior written approval, APPLICANT may sell, transfer, trade, or modify the ownership, use, management, and maintenance responsibilities of the REAL PROPERTY.

8. This ADRC and any amendments to it may be amended in any respect by the joint execution by STATE and APPLICANT of any instrument amending this ADRC. The amending instrument shall make appropriate reference to this ADRC and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the counties in which the property is located.

Enforcement

9. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Indemnification

10. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this ADRC. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this ADRC. STATE reserves the right to represent itself in any litigation in which STATE'S interests are at stake.

Purpose of Agreement

11. This ADRC is for the purpose of protecting and maintaining the present and future use of the REAL PROPERTY for the ENHANCEMENT AND MITIGATION PURPOSES for which this REAL PROPERTY was acquired and improved.

Severability

12. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this ADRC by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

Signature certifies **ADRC-Attachments A, B, C and D are attached** and this ADRC has been signed and notarized by the Applicant.

By: _____
Name and Title of Caltrans Representative

APPLICANT:

Signature certifies **ADRC-Attachments A, B, C and D are attached** and the entire document will be recorded and returned to Caltrans within 10 days of escrow closing.

By: _____
Name and Title

By: _____
Name and Title

Telephone number:

(Space below for Notary Public jurats or acknowledgments)

ATTACHMENT ADRC-A
LEGAL DESCRIPTION OF REAL PROPERTY

(For this EEMP project that involves the acquisition of real property, insert the legal description of the property to be purchased by the applicant consistent with the project APPLICATION, or as approved by STATE.)

ATTACHMENT ADRC-B

(For this EEMP project that involves the acquisition of real property, insert the project APPLICATION as approved by STATE.)

ATTACHMENT ADRC-C

PROHIBITED USES OF THE PROPERTY

Though not an exhaustive list of prohibited uses, none of the uses described below shall be made of the REAL PROPERTY. The following are set forth both to list specific prohibited activities and to provide guidance in determining whether other activities are inconsistent with the ENHANCEMENT AND MITIGATION PURPOSES of this ADRC:

1. Inconsistent or Adverse Actions: The change, disturbance, alteration or impairment of the ENHANCEMENT AND MITIGATION PURPOSES expressed within this ADRC.
2. No use or transfer of development rights: Except as expressly permitted by the terms the ADRC, the exercise of any of the following development rights associated with the REAL PROPERTY is prohibited, including, without limitation, the construction, reconstruction, or placement of any commercial, residential or other buildings, bridges, camping accommodations, house-trailers, permanent tent facilities, quonset huts or similar structures, golf courses, recreation or exercise equipment, ball fields, soccer fields, tennis courts, basketball courts or other recreational, entertaining or performance facilities, underground tanks, billboards, signs, or other advertising, and/or other structures or improvements. In addition, street lights, utility structures or power lines, sewer systems or sewer line, water system or water lines are prohibited unless used solely for the benefit of the ENHANCEMENT AND MITIGATION PURPOSES.

Except as expressly permitted by the terms of this ADRC, all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the REAL PROPERTY are terminated and extinguished and may not be hereafter exercised or transferred.

3. Subdivision: The legal or de facto division, subdivision, or partitioning of the REAL PROPERTY is prohibited. Notwithstanding the fact that, as of the date this ADRC is entered into, the REAL PROPERTY might be comprised of separate legal parcels, the terms and conditions of this ADRC shall apply to the REAL PROPERTY as a whole, and that REAL PROPERTY shall not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither APPLICANT, their representatives, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the REAL PROPERTY that constitutes less than the entire REAL PROPERTY. The existence of any separate legal parcels, if any, as of the effective date of this ADRC shall not be interpreted to permit any use or activity on an individual legal parcel that would not have been permitted on such individual legal parcel under the terms and conditions of this AGREEMENT as applied to the REAL PROPERTY as a whole.
4. Vehicles: The use of any motorized vehicles off designated roadways is prohibited, except for purposes to solely effectuate the ENHANCEMENT AND MITIGATION PURPOSES of the ADRC. The use of motorized vehicles for recreational purposes is prohibited.

5. Hazardous Material: The use, dumping, storage, or other disposal of refuse, trash, soil, bio-solids, ash, sewer sludge or unsightly or toxic or Hazardous Materials or agricultural chemical is prohibited.
6. No Commercial Uses: The establishment of any commercial or industrial uses including, but not limited to, intermittent, mobile or stationary facilities, is prohibited.
7. No Natural Resource Development: Except as expressly required or permitted by the terms of this AGREEMENT, the filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting of minerals, oil, gas, coal and other hydrocarbons, soils, sands, gravels, rocks or any other material on or below the surface of the REAL PROPERTY is prohibited.
8. Development of Water: Except as necessary to effectuate the ENHANCEMENT AND MITIGATION PURPOSES of this ADRC, the development of any water on the REAL PROPERTY is prohibited.
9. Junk Yards: The storage or disassembly of inoperable automobiles, machinery, equipment and trucks for purposes of storage, sale, or rental of space for any such purpose is prohibited.
10. Roads: The construction, reconstruction or replacement of any roadways or parking areas is prohibited except as necessary to effectuate the ENHANCEMENT AND MITIGATION PURPOSES of this ADRC.
11. Inconsistent or Adverse Activities: Any action or practice that is or becomes inconsistent with, diminishes or impairs the ENHANCEMENT AND MITIGATION PURPOSES is strictly prohibited.

ATTACHMENT ADRC-D

Applicant-State Agreement